



Filing Receipt

Received - 2022-01-04 12:53:37 PM
Control Number - 51841
ItemNumber - 22

PUC PROJECT NO. 51841

REVIEW OF 16 TAC §25.53	§	PUBLIC UTILITY COMMISSION
RELATING TO ELECTRIC SERVICE	§	
EMERGENCY OPERATIONS PLANS	§	OF TEXAS

LOWER COLORADO RIVER AUTHORITY AND LCRA TRANSMISSION SERVICES CORPORATION'S COMMENTS ON THE PROPOSAL FOR PUBLICATION TO REPEAL 16 TAC §25.53 AND REPLACE WITH PROPOSED NEW 16 TAC §25.53

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

The Lower Colorado River Authority and LCRA Transmission Services Corporation (collectively, LCRA) respectfully submit the following comments to the Proposal for Publication (PFP) proposing the repeal of 16 Tex. Admin. Code (TAC) §25.53 relating to Electric Service Emergency Operations Plans and the adoption of new 16 TAC §25.53 relating to Electric Service Emergency Operations Plans as approved at the November 30, 2021 Open Meeting.

I. INTRODUCTION

LCRA is a political subdivision of the State of Texas, created and functioning as a non-profit conservation and reclamation district under Article XVI, Section 59 of the Texas Constitution. LCRA has no taxing authority, receives no general funds in the legislative appropriation process, and relies on its own authority to generate revenues to provide its operating funds. LCRA participates in the Electric Reliability Council of Texas ("ERCOT") wholesale power market, owning and operating more than 3,300 MW of diverse generation resources. LCRA serves the power needs of 33 municipal electric utilities and electric cooperatives.

LCRA Transmission Services Corporation (TSC) is a nonprofit corporation and instrumentality of LCRA created to facilitate structural unbundling in accordance with Senate Bill 7. LCRA TSC owns and operates transmission, transformation, and metering facilities, including over 5,500 circuit miles of transmission lines in over 75 counties, and serves wholesale

transmission customers in the ERCOT system in accordance with Commission rules and ERCOT Protocols and Operating Guides.

In addition, LCRA manages the lower 600 miles of the Colorado River, securing and protecting the water supply for more than 1.4 million people and managing floodwaters through the operation of a series of dams along the Highland Lakes. Because of its broad legislative mandate to conduct not only wholesale power and electric transmission operations, but also water, telecommunications, parks, public safety, and other related functions, LCRA is unique among all other market entities, and this uniqueness is reflected in its enterprise-wide Emergency Operations Plan (EOP). As such, some portions of LCRA's emergency operations plans for its transmission and generation business units are captured within its Emergency Management Master Plan, which does not readily lend itself to the strict format suggested by the draft rule for standalone Transmission and Distribution Utilities or Power Generation Companies. Given the need for LCRA to maintain a coordinated emergency response across its broad functions, LCRA encourages the Commission to allow for appropriate flexibility in applying its new EOP rule and to focus on substance rather than form.

What follows is a sequential ordering of LCRA's comments on the PFP outlined according to each section's corresponding citation and heading. A one-page executive summary of the comments is provided following as a separate document in this filing.

II. COMMENTS ON PFP

A. Section (c) – Filing requirements.

- 1. The process and hosting platform for the filing of unredacted Emergency Operations Plans (EOPs) should be secure and, if electronic filing is required, encrypted.**

LCRA respectfully asks the Commission to address how it intends for entities to file their full, unredacted EOPs and to clarify the applicability of the Commission's existing procedural

rules for the filing of confidential or voluminous materials. As the Commission is likely aware, the process of submitting the recent Winter Weather Readiness Reports (WWRR) was fraught with technical challenges relating to dissemination and submission of the required forms, file size limitations, DocuSign bugs, and a host of other problems.¹ To avoid similar issues, the Commission should ensure that the EOP submission process is clear, proven, and incorporates lessons learned from the WWRR submittals. Moreover, given the short amount of time between new 16 TAC § 25.53 becoming final and the initial April 1, 2022 compliance deadline, the Commission should leverage its existing rules and procedures to the greatest extent possible.

However, the Commission's current electronic filing portal is not sufficiently secure and should not be used for the submittal of the type of highly sensitive and confidential Critical Energy Infrastructure Information contained in EOPs. LCRA respectfully urges that, for unredacted EOPs, the Commission establish a secure online portal that meets industry-leading cybersecurity and encryption specifications and is only accessible to relevant Commission staff. Until such a secure portal can be established, it would be appropriate to allow entities to file any confidential information contained in their EOPs with Central Records under the existing procedures in 16 TAC § 22.71(d). Alternatively, the Commission should authorize entities to maintain their full, unredacted EOPs at a designated location in Austin for inspection by appropriate Commission Staff, similar to the procedures for production of voluminous materials in 16 TAC § 22.144(h). The final rule should also include language affirmatively stating that any portions redacted or withheld by the submitting entity are confidential and not subject to public disclosure.

¹ See, e.g., ERCOT Market Notice W-A111621-02 Suggestions for Authorized Representatives for Transmission Service Providers experiencing issues receiving and processing Winter Weather Readiness Report (WWRR) forms (Nov. 18, 2021); ERCOT Market Notice W-A111221-02 Suggestions for Authorized Representatives for Resource Entities experiencing issues receiving and processing Winter Weather Readiness Report (WWRR) forms (Nov. 18, 2021); ERCOT Weather Emergency Preparedness FAQs (updated Nov. 23, 2021), *available at* https://www.ercot.com/files/docs/2021/11/10/Weatherization_FAQs_2021-11-10.pdf/.

2. The rule should not require annual filings in addition to the timely updates required under subsection (c)(4).

LCRA respectfully requests that the Commission delete the language requiring entities to annually file an EOP by February 15 of each year, following the initial April 1, 2022 compliance deadline. Elsewhere the draft rule ensures that new market entrants will be required to submit an EOP, and that existing entities will have to maintain updated EOPs based on any significant change or Commission-ordered modification to their EOP on file. It is unduly burdensome and serves no valid regulatory purpose to require annual filing of an EOP that is not substantively different than what is already on file with the Commission.

3. Given the sensitive nature of the information being filed, the rule should include the confidentiality language in Senate Bill 3.

While LCRA supports the intent of the Commission's rule, the concern for the misuse or mishandling of extremely sensitive information to the potential detriment of customer or stakeholder relationships—or worse, the collection by bad actors of confidential critical energy infrastructure information—remains. In Senate Bill 3, the Legislature specifically acknowledged this concern and directed that a “plan shall be provided to the commission in a redacted form for public inspection with the confidential portions removed” if it contains confidential information.²

To that end, LCRA requests that the Commission modify subsection (c)(1)(A) as follows:

- (A) An entity must file with the commission its unredacted EOP in its entirety and a public, redacted EOP. **The redacted portions of the EOP are considered confidential information and are excepted from public disclosure.**

4. To avoid duplicative and potentially conflicting requirements, the ERCOT Protocols should continue to govern submissions of EOPs to ERCOT.

Currently, the ERCOT Nodal Operating Guide requires Transmission Operators to submit their EOPs to ERCOT (via secured webmail or encrypted data transfer) and, as required by NERC

² Tex. Util. Code § 186.007(f).

Reliability Standard EOP-011, ERCOT must review these entities' EOPs. The nature and scope of this review is related to ERCOT's function as the Balancing Authority (BA) and Reliability Coordinator (RC) for the ERCOT region. It is not clear why ERCOT would need to review other types of entities' EOPs, what that review would involve, and what qualifications ERCOT staff possess to warrant them reviewing EOP provisions unrelated to the BA/RC function. Absent a justification for ERCOT to review other market participants' EOPs, and to avoid potential conflicts between PUC and ERCOT rules, LCRA suggests deleting subsections (c)(1)(B) and (c)(4)(D).

5. An after-action report should not be required to be incorporated into an EOP; rather, changes to policies and procedures that result from an after-action review should be timely submitted as an updated filing pursuant to subsection (c)(4)(C).

Consistent with LCRA's prior comment that an annual filing of the EOP is not necessary or appropriate absent a substantive change to the plan, LCRA recommends modifying and relocating the proposed requirement in subsection (c)(1)(C) into subsection (c)(4)(C). In a year in which the EOP was not activated and no significant modification to the EOP was made, an entity should not be required to re-file its existing EOP. But if the EOP was activated and lessons learned from that activation resulted in modifications to an entity's policies and procedures, those updates should be timely reported to the Commission under the 30-day timeline proposed in subsection (c)(4)(C). Accordingly, LCRA recommends that the Commission delete subsection (c)(1)(C) from the draft rule and modify subsection (c)(4)(C) as follows:

- (C) An entity must file an updated EOP if the entity makes a significant change to its EOP. A significant change to an EOP includes a change that has a material impact on how the entity would respond to an emergency, **including a change made as a result of any after-action review performed following the activation of its EOP.** The entity must file the updated EOP with the commission no later than 30 days after the change takes effect.

B. Section (d) – Information to be included in the emergency operations plan.

As a general comment, LCRA urges the Commission to avoid overly prescriptive organizational requirements that elevate form over substance or mandate a “one size fits all” approach for the diverse range of entities subject to this rule. As a political subdivision of the State of Texas with responsibility over a vast array of statutory functions, LCRA has an EOP that differs substantially from other types of market participants. While some aspects of its power generation and transmission-specific EOPs are structured as stand-alone documents that can be organized to mirror the requirements proposed in the PFP, others are contained in integrated, enterprise-wide plans necessary for an effective and coordinated emergency response. The Commission’s rules should not be drafted in a manner that undermines the efficiency or effectiveness of this approach.

1. Section (d)(2) should clarify the definition of “distribution” and allow for cloud-based and/or internally maintained centralized platform hosting of the EOPs within the entity’s organization.

Section (d)(2) requires an entity to submit to the Commission a “record of distribution” that contains the names and titles of individuals who have received the EOP along with the date they received it. LCRA requests that the Commission clarify that an entity that stores its EOP in a secure, internally maintained centralized platform need only provide a record of employees with access to the EOP and the corresponding date when access was granted. The rule should not be interpreted to require “distribution” by email or other similar means, if that is not how the entity maintains and controls access to its EOP. The Commission should also explicitly address whether a modification to the list of employees with access to the EOP constitutes a “significant change” requiring an update under subsection (c)(4)(C). LCRA respectfully suggests that it should not, as employee turnover, job changes, title changes, and other routine activities could make this requirement extremely burdensome.

2. The information required by subsection (d)(3) is unclear.

Section (d)(3) requires a list of “emergency contacts” as well as “single points of contact during an emergency.” This language is unclear in that it requests both a list of emergency *contacts* (plural) and *single points* of contact (both plural and singular). Nor is it clear whether the emergency contacts should be the same individuals as the single points of contact, or whether they should be different. Further, the draft rule does not specify for what type of emergency and for what purpose a contact should be given. For example, contacts to facilitate media coordination would likely not be the same contacts for outreach to the Commission or ERCOT. The Commission should clarify the intended purpose of this requirement so that entities can provide the appropriate information.

LCRA also notes that all entities subject to this rule are already required to maintain points of contact with the Commission (which are all listed on the Market Directories section of the PUC Website). If the Commission intends the emergency contact and/or single points of contact to be someone other than the representative on file with the Commission, further guidance on this requirement would be helpful.

3. The highest-ranking official cannot affirm via affidavit an employee’s personal commitment to following an EOP.

Section (d)(4)(A) requires an entity’s highest-ranking official to swear by affidavit to several things. Specifically, it requires the official to affirm that relevant operating personnel “are committed to following the EOP.” LCRA respectfully requests that the Commission strike this language from the rule because it is impossible to affirm via affidavit an employee’s personal and individual commitment. Further, it is a subjective question and cannot be objectively verified by an entity’s highest-ranking official. LCRA suggests the language be modified as follows:

- (A) relevant operating personnel are familiar with and have received training on the contents of the EOP ~~and such personnel are committed to following~~

~~the EOP except to the extent deviations are appropriate as a result of specific circumstances during the course of an emergency;~~

4. Section (d)(4)(D) is unclear and raises questions, specifically the definition of “local jurisdiction.”

In section (d)(4)(D), an entity’s highest-ranking official must affirm that the “EOP or an appropriate summary has been distributed to local jurisdictions as needed.” Given the highly sensitive nature of the information contained in the EOP, LCRA does not believe it would be appropriate to distribute the EOP outside of its organization to “local jurisdictions.” It is also not clear what is meant by “local jurisdictions.” This provision should be stricken from the rule.

5. In section (d)(5)(A), the Commission should clarify that the procedure for handling complaints refers specifically to retail customer complaints.

To avoid creating confusion and regulatory uncertainty, the Commission should clarify that the “procedures for handling complaints” specifically refers to complaints from the utility’s end-use retail customers. Otherwise, the rule could be interpreted as applying to other types of complaints involving utility rates, services, and operations—e.g., service boundary disputes between utilities, rate-related issues, and other types of disputes that are handled by the Commission under separate schemes and are beyond the scope of an entity’s emergency operations plan. In furtherance of this clarification, LCRA proposes the following revision to subsection (d)(5)(A):

- (A) An entity with transmission or distribution service operations must describe the procedures for handling complaints **from its retail end-use customers** and for communicating with the public; the media; customers; the commission; local and state governmental entities, officials, and emergency operations centers; the applicable Reliability Coordinator; and critical load customers directly served during an emergency.

C. Section (e) – Annexes to be included in the emergency operations plan.

1. The Commission should not require a separate “annex” if the substantive requirements are otherwise addressed as part of an integrated plan.

Consistent with LCRA’s earlier comments, the rule should not elevate form over substance and impose rigid organizational requirements on an entity’s EOP, particularly in light of the compressed compliance schedule mandated by an April 1, 2022 filing deadline.

2. The meaning of “separate and distinct” is unclear.

In subsections (e)(1)(A)(i) and (e)(1)(B)(i), the draft rule requires “separate and distinct” emergency operation plans from those required under 16 TAC § 25.55. It is unclear whether this is only administrative or substantive in nature. An administrative reading may suggest, among other things, that an entity may not use a §25.55 plan to satisfy compliance with new §25.53. But a substantive reading may suggest that an entity must develop and file emergency operations plans without any reference to or guidance from the preparations it undertook in fulfillment of §25.55. Furthermore, such a substantive reading may also suggest that no similar language may appear in the new §25.53 plan that has already appeared in the §25.55 plan.

To this end, LCRA and LCRA TSC request that the Commission clarify the intended meaning of the phrase “separate and distinct” in the PFP. Suggested language for both section (e)(1)(A)(i) and (e)(1)(B)(i) is as follows:

- (i) operational plans intended to mitigate the hazards of a [cold/hot] weather emergency, ~~separate and distinct from the weather preparation standards required under §25.55 (relating to Weather Emergency Preparedness);~~

3. The definition of a “hot weather emergency” is unclear.

Section (e)(1)(B) requires a “hot weather emergency annex,” but the types of events that are classified as a hot weather emergency are unclear. Hot weather emergencies may include events such as wildfires, but because a wildfire annex is already required under later section (e)(E),


LCRA and LCRA TSC request that the Commission strike section (e)(B) altogether as duplicative of other requirements.

III. CONCLUSION AND PRAYER

LCRA and LCRA TSC appreciate the Commission's consideration of these comments and the comments filed by the Texas Public Power Association and ask that the Commission adopt these recommendations in approving new 16 TAC § 25.53.

Respectfully submitted,

Emily R. Jolly
Vice President, Regulatory Affairs &
Associate General Counsel
Texas State Bar No. 24057022
Lower Colorado River Authority
P. O. Box 220
Austin, Texas 78767-0220
(512) 578-4011 telephone
(512) 473-4010 facsimile
Email: emily.jolly@lcra.org

By: 

Emily R. Jolly

PUC PROJECT NO. 51841

REVIEW OF 16 TAC §25.53	§	PUBLIC UTILITY COMMISSION
RELATING TO ELECTRIC SERVICE	§	
EMERGENCY OPERATIONS PLANS	§	OF TEXAS

LCRA AND LCRA TSC'S EXECUTIVE SUMMARY

- The Commission's current electronic filing portal is not sufficiently secure and should not be used for the submittal of the type of highly sensitive and confidential CEII contained in EOPs. Entities should be permitted to file any confidential information under the existing procedures in 16 TAC § 22.71(d), and the Commission should authorize entities to maintain their full, unredacted EOPs at a designated location in Austin for inspection by appropriate Staff until a sufficiently secure electronic portal can be established.
- The final rule should include language affirmatively stating that any portions redacted or withheld by the submitting entity are confidential and not subject to public disclosure.
- The rule should not require annual filings in addition to the timely updates required under subsection (c)(4).
- To avoid duplicative and potentially conflicting requirements, the ERCOT Protocols should continue to govern submissions of EOPs to ERCOT by Transmission Operators. Other entities should not be required to submit their EOPs to ERCOT.
- An after-action report should not be required to be incorporated into an EOP; rather, changes to policies and procedures that result from an after-action review should be timely submitted as an updated filing pursuant to subsection (c)(4)(C). In a year in which the EOP was not activated and no significant modification to the EOP was made, an entity should not be required to re-file its existing EOP.
- Section (d)(2) should clarify the definition of "distribution" and allow for cloud-based and/or internally maintained centralized platform hosting of the EOPs within the entity's organization. The rule should not be interpreted to require "distribution" by email or other similar means, if that is not how the entity maintains and controls access to its EOP.
- The information required by subsection (d)(3) is unclear. If the Commission intends the emergency contact and/or single points of contact to be someone other than the representative on file with the Commission, further guidance would be helpful.
- The highest-ranking official cannot affirm via affidavit an employee's personal commitment to following an EOP. Subsection (d)(4)(A) should be modified accordingly.
- Given the highly sensitive nature of the information contained in the EOP, LCRA does not believe it would be appropriate to distribute the EOP outside of its organization to "local jurisdictions." This language in subsection (d)(4)(D) should be modified or removed.
- In section (d)(5)(A), the Commission should clarify that the procedure for handling complaints refers specifically to retail customer complaints.
- The meaning of "separate and distinct" in subsections (e)(1)(A)(i) and (e)(1)(B)(i) is unclear and should be modified or removed.
- The definition of a "hot weather emergency" in subsection (e)(1) (B) is unclear and should be removed as duplicative of other requirements.